

**REMARKS**

Claims 38-77 are pending in the present application. Claims 38 and 72 are independent. Claims 52 and 73 have been amended to correct the dependencies thereof. Reconsideration of this application, as amended, is respectfully requested.

**Election/Restriction**

Applicants hereby elect Group I, Species IB with traverse for examination on the merits. Applicants submit that claims 42-47 are readable on the elected invention IB.

**Restriction Requirement**

The Examiner has set forth a Restriction Requirement with regard to claims 38-66 and 69-76 [sic, 77]. The grouping of the claims is set forth as follows:

- I.      Claims 38-66 and 69-71, drawn to a device for converting a stream of living poultry.
- II.     Claims 72, 74 and 76 [sic, 72-77], drawn to a method for making a fluctuating stream of living poultry.

For the purposes of the Examiner's Restriction Requirement, applicants elect Group I directed to claims 38-66 and 69-71 with traverse for action on the merits. However, the Examiner is respectfully requested to reconsider the Restriction Requirement in view of the remarks as set forth herein below. Specifically, it is respectfully requested that the Examiner reconsider his Restriction Requirement, since no serious burden would be presented to the Examiner by examining all of the claims in a single application.

As set forth in § 803 of the MPEP, the Examiner must examine an application on the merits if the examination of the entire application can be made without serious burden. Two (2) criteria are identified for proper requirement for restriction:

- I. The invention must be independent or distinct as claimed; and
- II. There must be a series burden on the Examiner if the restriction is not required.

Applicants respectfully submit that a series burden has not been placed on the Examiner to consider all of the claims in a single application. In view of this, it is respectfully requested that the Examiner reconsider the Restriction Requirement and examine all of the claims in the present application.

#### **Election of Species**

The Examiner has also required an election in the present application between:

Species IA is directed to at least one holder unloads the poultry by at least one unloading device. See claims 39-41, 59-62 and 65 and 66.

Species IB is directed to a control device linked to the conveyor device to convey poultry at a conveying speed. See claims 42-47.

Species IC is directed to at least one buffer storage member. See claims 48 and 49.

Species ID is directed to a stunning station arranged upstream of the connecting station. See claim 50.

Species IE is directed to a second buffer storage member. See claim 51.

Species IF is directed to the conveying station having at least one sensor. See claims 53 and 54.

Species IG is directed to a connecting station having a number of connecting lines. See claims 69 and 70.

Species IH is directed to the device configured to adjust the number of birds. See claim 71.

### **Species Within Group I**

The Examiner has also required an election within the Group I. Applicants respectfully submit that this Election of Species Requirement is incorrect. However, Applicants hereby elect Species IB with traverse. Claims 38-66 and 69-71 read on the elected species, because none of these claims are mutually exclusive (for the reasons explained below).

It is believed that all of claims 38-66 and 69-71 should be examined by the Examiner, and therefore all of these claims have been indicated in the above claim set as being elected.. However, if Applicants must elect only claims that are directed to a control device linked to a conveyor device to convey poultry at a conveying speed, then Applicants elect Species IB, consisting of claims 38, 42-47 and 58 with traverse.

The Office Action states that Group I contains seven patentably distinct species, Species IA-IH. Applicants respectfully traverse this Election of Species requirement.

First, the alleged species are stated in terms of claims (see pages 2 and 3 of the Office Action), not embodiments. This is improper because MPEP §806.04(e) clearly points out that species are definitions of inventions and that *claims are never species*.

Second, it is fundamentally improper to require election of species for dependent claims 39-66 and 69-71. In this regard, the attention of the Examiner is directed to MPEP § 806.04(f) which points out that claims to be restricted to species must be mutually exclusive, i.e., for claims to be properly restricted to different species, those claims must recite the mutually exclusive characteristics of such species. However, each of claims 39-66 and 69-71 recites all of the features of generic claim 38 and, claims 39-66 and 69-71 are not mutually exclusive. Accordingly, the election of species with respect to claims 39-66 and 69-71 is improper.

In other words, claims 39-66 and 69-71 could be rewritten to be dependent from each other, as they are not inconsistent with each other.

In view of the above, both the restriction requirement and the election of species requirement are improper. Reconsideration, withdrawal of these requirements, and examination of all pending claims, i.e. claims 38-66 and 69-77, are respectfully requested.

To the extent the Examiner persists in the present Restriction/Election, applicants reserve the right to file a Divisional Application directed to the non-elected claims. Further to this, it is believed that independent claim 38 is in condition for allowance. Therefore at least claims 39-41, 48-57, 59-66 and 69-71 should be re-joined and considered by the Examiner on the merits, once claim 38 is considered by the Examiner to be allowable. Applicants also reserve the right to petition the Examiner's Restriction and/or Election of Species Requirement.

Favorable action on the present application is earnestly solicited.

- Attached is a Petition for Extension of Time.
- Attached hereto is the fee transmittal listing the required fees.

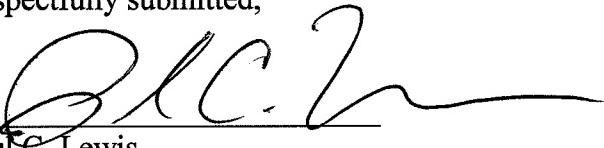
Application No.: 10/541,219  
Reply dated September 14, 2009  
Reply to Notice of Non-Compliant Amendment dated September 3, 2009

Docket No.: 1063-0106PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: **September 14, 2009**

Respectfully submitted,

By   
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